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Madison County Circuit Court 4
Madison County, Indiana

STATE OF INDIANA	)	IN THE MADISON CIRCUIT COURT #4
	) SS:	
COUNTY OF MADISON	)	CAUSE NO. 48C04-2010-PL-000147

GROVER McPHAUL,	)
	)
Plaintiff,	)
	)
v.	)
	)
MADISON COUNTY SHERIFF'S DEPARTMENT, MADISON COUNTY BOARD OF COMMISSIONERS, and MADISON COUNTY COMMUNITY JUSTICE CENTER,	)
	)
Defendants.	)

DEFENDANTS' MOTION TO DISMISS

Come now Defendants, Madison County Sheriff's Department, Madison County Board of Commissioners and Madison County Community Justice Center, by counsel, pursuant to Indiana Trial Rule 12(C), respectfully move the Court to Dismiss the Plaintiff's Complaint.

I. INTRODUCTION

This case is alleged to have arisen during Plaintiff's incarceration in Madison County in August 2018. Plaintiff was booked into the Madison Co. Jail on July 22, 2018 for burglary, residential entry and battery and placed into the Madison County Correctional Complex. Plaintiff proceeded to file his pro se Complaint against the Defendants for multiple allegations that arise out of the events that occurred on August 20, 2018. Plaintiff's Claims should be dismissed because Plaintiff's alleged claims are barred by the Statute of Limitations, the Doctrine of Collateral Estoppel, and *Heck v. Humphrey*.

II. MATERIAL FACTS

On October 12, 2020, Plaintiff filed his handwritten complaint Plaintiff claiming violations of Indiana Constitution Article 1§11, 1§12, and 1§ 16. (Plaintiff's Complaint attached as Exhibit A). Plaintiff's Complaint claims false arrest imprisonment, assault and battery, malicious prosecution, negligence, violations of due process, emotional pain and distress, and cruel and unusual punishment and abuse of process. All of Plaintiff's claims arise out of events on August 20, 2018. (See Plaintiff's Complaint).

Plaintiff alleges in his Complaint that on August 20, 2018 that he was incarcerated in the Madison County Community Justice Center. (Plaintiff's Complaint). On this date (August 20, 2018) Plaintiff alleges that law enforcement officers claimed that Plaintiff threw a metal meal tray at a Control Booth Window. (Plaintiff's Complaint). Per Plaintiff, an altercation ensured with officers after the window event and Plaintiff claimed self-defense in his actions involving the officers. (Plaintiff's Complaint). Plaintiff was charged with 2 counts of Felony Battery on a Public Safety Officer and 1 count of Criminal Mischief for the events of August 20, 2018. (Plaintiff's Complaint). Plaintiff was found guilty of the charges against him on November 12, 2018. (Plaintiff's Complaint). Plaintiff received a 6-year sentence to be executed at the Indiana Department of Correction. (Plaintiff's Complaint).

Following the jury trial for the events of August 20, 2018, Plaintiff appealed the convictions alleging errors committed by the trial court. *Grover McPhaul v. State of Indiana*, 132 N.E.3d 939 (Ind. Ct. App. 2019). A copy of *Grover McPhaul v. State of Indiana*, 132 N.E.3d 939 (Ind. Ct. App. 2019) is attached as Exhibit B to the Defendant's Motion to Dismiss. The Court of Appeals found no errors by the trial

court and thus upholding the convictions (two (2) counts of battery resulting in bodily injury to a public safety official, both level 5 felonies, and one (1) count of criminal mischief, a Class B misdemeanor). Id. at 1.

The facts as preserved in the Court of Appeals record confirm that on August 20, 2018 that Plaintiff was an inmate house at the Madison County Correctional Complex (MCCC). *Id.* at 1. At around 4:58 p.m., a correctional officer who was inside a control room heard a thud against the window. *Id.* To determine the noise the officer rewound the security footage which showed Plaintiff throw his dinner tray against the window of the control room in violation of MCCC rules. *Id.* After viewing the footage, the officer in the control room requested that officers remove Plaintiff from the Dorm so that he could be questioned on the violations observed on the video. *Id.* Officer Nick Robinson and Officer Austin Bently responded. Officer Robinson requested that Plaintiff cuff up which Plaintiff "just blew it off and walked past" him. *Id.* at 1. Plaintiff then ignored commands and resisted offices' attempts to place him into mechanical restraints. *Id.* at 1. A struggle ensued, Plaintiff kicked forcibly, attempted to punch officers, forcibly took Officer Bentley glasses from his face and then began going for the officer's eye. *Id.* at 2. Plaintiff continued to resist until the arrival of a third officer which allowed the officers to get mechanical restraints on the Plaintiff. *Id.* at 2.

The Court of Appeals recognized the facts in the record that Plaintiff repeatedly ignored commands and forcibly resisted while three officers attempted to restrain him. *Id.* at 5. The Court of Appeals stated, "*There is no doubt that the correctional officers were engaged in the lawful execution of their duties, as instructed, and the record reveals no evidence of self-defense.*" Id. at 5. The Court of

Appeals upheld the conviction of two (2) counts of battery resulting in bodily injury to a public safety official, both level 5 felonies, and one (1) count of criminal mischief, a Class B misdemeanor. *Id.* at 1.

III. Legal Standard

Indiana Rule of Civil Procedure 12(C) provides that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." The pleadings include the complaint, the answer, and any written instrument attached as exhibits. Ind. Trial Rule 12(C); *Northern Indiana Gun and Outdoor Shows, Inc., v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998). In considering a motion for judgment on the pleadings, courts employ the same standard as a motion to dismiss under Ind.R.Civ.P. 12(b). *National R.R. Passenger Corp. v. Everton By Everton,* 655 N.E.2d 360 (Ind. Ct. App. 1995). Indiana Rule of Civil Procedure 12(b)(6) authorizes the dismissal of claims for "failure to state a claim upon which relief may be granted." When a complaint shows on its face that it has been filed after the running of the applicable statute of limitations, judgment on the pleadings is appropriate under Indiana Trial Rule 12(C). *Richards-Wilcox, Inc. v. Cummings, et. al.*, 700 N.E.2d 496, 498 (Ind. Ct. App. 1998); citing *Monsanto Co. v. Miller* N.E.2d 392 (Ind. Ct. App. 1983).

IV. *Plaintiff's Claims are barred by the statute of limitations*

Pursuant to IC 34-11-2-4 the time frame for bringing the actions claimed in Plaintiff's complaint were required to be commenced within two (2) years after the cause of action accrued. When a complaint shows on its face that it has been filed after the running of the applicable statute of limitations, judgment on the pleadings is appropriate under Indiana Trial Rule 12(C). *Richards-Wilcox, Inc. v. Cummings, et. al.*,

700 N.E.2d 496, 498 (Ind. Ct. App. 1998); citing *Monsanto Co. v. Miller* N.E.2d 392 (Ind. Ct. App. 1983).

The events giving rise to the alleged claims occurred on and arose out of the August 20, 2018 date when Plaintiff was an inmate house at the Madison County Correctional Complex (MCCC) and assaulted correctional officers after he threw the food tray at the control booth window.

Accordingly, Plaintiff had to, and including, August 20, 2020 to file his Complaint in accordance with the statute of limitations. However, Plaintiff's Complaint was not filed until October 12, 2020. Therefore, Plaintiff's claims are barred by the statute of limitation and must be dismissed.

V. Plaintiff's Claims are Barred by the Doctrine of Collateral Estoppel

The doctrine of collateral estoppel is a bar to subsequent litigation of a fact or issue which was adjudicated in previous litigation. *Nolan v. City of Indianapolis*, 933 N.E.2d 894 (Ind. Ct. App. 2010); *Pritchett v. Heil*, 756 N.E. 2d 561 (Ind. Ct. App. 2001). The former adjudication will be conclusive in the subsequent action even if the two actions are on different claims. *Id.*

In *Nolan v. City of Indianapolis,* the Indiana Court of Appeals held that criminal prosecution, wherein the trial court found that the defendant's arrest was lawful, precluded the defendant under the doctrine of collateral estoppel, from subsequently relitigating the lawfulness of his arrest in his civil claims for false arrest and false imprisonment. *Nolan v. City of Indianapolis*, 933 N.E.2d 894 (Ind. Ct. App. 2010). A two-part analysis determines whether collateral estoppel should be employed in a particular case: (1) whether the party against whom the former adjudication is

asserted had a full and fair opportunity to litigate the issue and (2) whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel in the current action. Id.

Plaintiff's Complaint clearly states the facts that he was found guilty and convicted of two (2) counts of battery resulting in bodily injury to a public safety official, both level 5 felonies, and one (1) count of criminal mischief, a Class B misdemeanor. (Plaintiff's Complaint). As is laid out in the facts all of the events germane to this case arose out of the events of August 20, 2018. Plaintiff's Complaint is an attempt to completely relitigate his criminal case which he was found guilty and the Court of Appeals subsequently upheld. See *Grover McPhaul v. State of Indiana*, 132 N.E.3d 939 (Ind. Ct. App. 2019) and Plaintiff's Complaint. In his criminal case Plaintiff claimed self-defense in his altercation with the Madison County Correctional Officers, denied that he broke any rules, and raised issues relating to preservation of video evidence in the underlying criminal case. Plaintiff now makes the same allegation in his Complaint in this civil action. See Plaintiff's Complaint and *McPhaul v. State of Indiana*, 132 N.E.3d 939 (Ind. Ct. App. 2019). Clearly Plaintiff is attempting to re-litigation the criminal case now in a civil lawsuit which the law does not allow.

Based upon the evidence and facts of this case the doctrine of collateral estoppel precludes the Plaintiff for relitigating the lawfulness of the actions of the Madison County Sheriff's Department on August 20, 2018. Accordingly, the Defendants are entitled to have the Plaintiff's Complaint dismissed under the doctrine of collateral estoppel.

VI. Plaintiff's Claims Are Barred by Heck v. Humphries

In his Complaint, Plaintiff admits that he was found guilty and convicted of two (2) counts of Felony Battery on a Public Safety Officer and (1) count of Criminal Mischief. He had a jury trial which he was found guilty and the Indiana Court of Appeals has upheld the trial court's actions. See *Grover McPhaul v. State of Indiana*, 132 N.E.3d 939 (Ind. Ct. App. 2019).

In *Heck v. Humphrey,* the United States Supreme Court held:

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S.Ct. 2364, 2372, 129 L.Ed.2d 383 (1994).

The Supreme Court subsequently extended the holding of *Heck* to a challenge to the disciplinary hearing process afforded an inmate where a judgment in favor of the inmate would imply the invalidity of the punishment imposed, namely the revocation of good time credit. *See Edwards v. Balisok*, 520 U.S. 641, 646, 648 (1997).Heck has also been extended to pertain to probation revocation.

In *Baskett v. Papini*, 245 F. App'x 677, 678 (9th Cir. 2007), the Ninth Circuit held that the district court properly dismissed Plaintiff section 1983 action as *Heck*-barred because his allegations necessarily call into question the validity of the

probation revocation, *see also Butterfield v. Bail,* 120 F.3d 1023, 1024 (9th Cir.1997) (holding that a 42 U.S.C. § 1983 challenge to the denial of parole is barred by *Heck*); and Vickers v. Donahue, 137 F. App'x 285 (11th Cir. 2005), 1983 false arrest claim against probation officers, arising out of arrest for violation of probation conditions, was barred by *Heck v. Humphrey*, requiring a plaintiff seeking damages for alleged unlawful actions that would render a conviction invalid to prove the conviction was reversed, where arrestee's probation was revoked because of the violation of probation conditions, and prevailing in false arrest claim would inevitably undermine the revocation order.

In this case, Plaintiff alleges claims false arrest imprisonment, assault and battery, malicious prosecution, negligence, violations of due process, emotional pain and distress, and cruel and unusual punishment and abuse of process all of which arise out of the events of August 20, 2018. Plaintiff's convictions and sentence has not been reversed on direct appeal, expunged by executive order, or declared invalid by a state tribunal authorized to make such determination. Plaintiff is still incarcerated with the Indiana Department of Correction for the convictions of the crimes that he committed on August 20, 2018. Plaintiff claims/allegation should all be precluded and barred by H*eck v. Humphries.*

WHEREFORE, the Defendants, Madison County Sheriff's Department, Madison County Board of Commissioners and Madison County Community Justice Center, would pray for judgment in their favor, that the Plaintiff's Complaint be Dismissed, that the Plaintiff takes nothing by way of his Complaint, for costs of this action, and for all other just and proper relief in the premises.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 13th day of January 2021, a copy of this document was filed electronically via the Court's system.

I further certify that a copy of the foregoing document has been duly served upon all persons listed below, by United States mail, first-class postage prepaid, on the 13th day of January, 2021:

Grover McPhaul
IDOC#273056
Wabash Valley Correctional Facility
P.O. Box 1111
Carlisle, IN 47838

By: 
Matthew D. Miller, #21744-49

(MAILING ADDRESS)
Travelers Staff Counsel Indiana
P.O. Box 64093
St. Paul, MN 55164-0093
Direct Dial: (317) 818-5117
Fax: (317) 818-5124
mmille22@travelers.com
MDM/km

(1)

IN THE MADISON
COUNTY CIRCUIT COURT
2020 TERM

PLAINTIFF,
GROVER McPHAUL

V. S.

DEFENDANTS,
MADISON COUNTY SHERIFF'S
DEPARTMENT ET. al
MADISON COUNTY COMMUN
ITY JUSTICE CENTER

MADISON COUNTY BOARD
OF COMMISSIONERS
JOHN RICHWINE - NORTH
KELLY GASKELL - SOUTH
MIKE PHIPPS - MIDDLE

CAUSE NUMBER:
48C04-2010-PL-000147

FILED
2020 OCT 12 PM 1:00
Olivia Pratt, CLERK
MADISON CO CIRCUIT COURT
ANDERSON, IN

CLAIM / COMPLAINT

PLAINTIFF HAS FILED A NOTICE OF TORT WITH THE MADISON COUNTY BOARD OF COMMISSIONERS AND THE MADISON COUNTY COUNCIL WITHIN THE SPECIFIED (180) DAY TIME FRAME.

THIS CLAIM/COMPLAINT IS BROUGHT FOR VIOLATION OF RIGHTS GUARANTEED BY THE INDIANA CONSTITUTION - ARTICLES 1 § 11, 1 § 12, AND 1 § 16.

PLAINTIFF BRINGS THIS ACTION FOR FALSE ARREST / IMPRISONMENT, ASSAULT & BATTERY, MALICIOUS PROSECUTION, NEGLIGENCE, VIOLATION(S) OF DUE PROCESS, EMOTIONAL PAIN & DISTRESS, AND CRUEL & UNUSUAL PUNISHMENT. ABUSE OF PROCESS.

FACTS:

ON AUGUST 20, 2018 I WAS INCARCERATED AT THE MADISON COUNTY COMMUNITY JUSTICE CENTER, WHICH SERVES AS A JAIL OVERFLOW FACILITY FOR THE MADISON COUNTY SHERIFF'S DEPARTMENT. ACCORDING TO DE FACTO LAW ENFORCEMENT OFFICERS OF THE FACILITY, I THREW A MEAL TRAY AT A CONTROL BOOTH WINDOW CAUSING A THUD. AS A RESULT OF THE THUD, OFFICER NICK ROBINSON ENTERED THE DORM TO REMOVE ME. MR. ROBINSON GRABBED PLAINTIFF BY THE ARM CAUSING ME TO FALL TO THE GROUND. A SECOND OFFICER-AUSTIN BENTLEY WHO CAME TO ASSIST, ALSO GRABBED PLAINTIFF FALLING TO THE GROUND, ALONG WITH OFFICER ROBINSON. A SCUFFLE ENSUED BETWEEN THE OFFICERS, AND MYSELF. MY ACTIONS BEFORE, DURING, AND AFTER THE ALTERCATION WERE IN SELF-DEFENSE AND IN TANDEM WITH INDIANA CODE 34-41-3-2 - WHICH OUTLINES SELF DEFENSE OF ONE SELF OR ANOTHER PERSON. [redacted] THERE WERE NO FACILITY RULES BROKEN THAT WOULD HAVE TRIGGERED SUCH A RESPONSE FROM THE OFFICERS.

NONE OF THE OFFICERS INVOLVED IN THIS INCIDENT WERE CERTIFIED OFFICERS, PURSUANT TO INDIANA CRIMINAL LAW & PROCEDURE.

THE FACILITY VIDEO SYSTEM RECORDED THE ENTIRE INCIDENT AND IT WAS UNDER THE SOLE CONTROL OF THE OFFICERS SUPERVISOR-MASON BRIZZIDINE. ON SEPTEMBER 7, 2018 & SEPTEMBER 12, 2018 I REQUESTED THAT ANY/ALL VIDEO FROM 8-20-18, BE PRESERVED. ON SEPTEMBER 7, 2018 A FILE RECOMMENDING CRIMINAL CHARGES WAS FORWARDED TO THE MADISON COUNTY PROSECUTORS BY LIEUTENANT DARWIN DWIGGINS OF THE MADISON COUNTY SHERIFF'S DEPARTMENT. ON SEPTEMBER 24, 2018, DEPUTY PROSECUTOR JOHN MCKAY CHARGED PLAINTIFF WITH (2) COUNTS OF FELONY BATTERY ON A PUBLIC SAFETY OFFICIAL, AND (1) COUNT OF CRIMINAL MISCHIEF. ON NOVEMBER 8, 2018 A COURT MOTION WAS FILED REQUESTING THAT VIDEO BE PRESERVED. A MOTION WAS ALSO FILED FOR MERITORIOUS SELF-DEFENSE. ON NOVEMBER 13, 2018, IT WAS DISCOVERED THAT MR BRIZZIDINE ALLOWED THE REQUESTED VIDEO TO ERASE. MR. BRIZZIDINE TESTIFIED THAT HE SAVED A (3) MINUTE PORTION OF VIDEO RELATED TO THE INCIDENT. MR. BRIZZIDINE ALSO TESTIFIED THAT THE PORTION OF VIDEO SAVED WAS FOR PROSECUTION PURPOSES, AND DESPITE HAVING THE ABILITY TO SAVE THE REQUESTED VIDEO- HE CHOSE NOT TO. IN OTHER WORDS, POTENTIALLY

USEFUL VIDEO EVIDENCE WAS ALLOWED TO ERASE OR OTHERWISE DESTROYED. THE VIDEO EVIDENCE REQUESTED WAS EXCULPATORY, MEANING IT WOULD HAVE TENDED TO ESTABLISH MY INNOCENCE. ON AUGUST 28, 2018 DEPUTY PROSECUTOR JOHN McKAY FILED A STATE'S REPORT TO THE COURT ON BOND MODIFICATION WHICH STATED THE FOLLOWING:

> "THE STATE HAS BEEN INFORMED OF AN INCIDENT REPORT FILED BY THE MADISON COUNTY SHERIFF'S DEPARTMENT REFERENCING AN INCIDENT ON AUGUST 20, 2018 WHEREBY THE DEFENDANT WAS INVOLVED IN A PHYSICAL ALTERCATION WITH ANOTHER INMATE AND THAT THE DEFENDANT ASSAULTED AN MCCC STAFF."

AT TRIAL, ALL OF THE STATE'S WITNESSES TESTIFIED THAT THERE WAS NO PHYSICAL ALTERCATION INVOLVING ANOTHER INMATE, WHICH INDICATED THAT THE PROSECUTION WAS LYING. THE STATE'S FAILURE TO PRESERVE THE VIDEO EVIDENCE WAS IN VIOLATION OF BRADY V. MARYLAND, AND IN BAD FAITH. ON SEPTEMBER 24, 2018, MR. McKAY FILED CRIMINAL CHARGES AFTER THE REQUESTED VIDEO PERMANENTLY ERASED.

ON NOVEMBER 16, 2018 I WAS FOUND GUILTY, AS CHARGED. ON DECEMBER 10, 2018 I RECEIVED A (6) YEAR SENTENCE, (3) OF THOSE YEARS TO BE EXECUTED AT THE INDIANA DEPARTMENT OF CORRECTION. DURING THE SCUFFLE, A THIRD OFFICER - CALEB GARRETT KICKED ME REPEATEDLY AS I LAY ON THE GROUND; EVEN THOUGH I WAS COMPLIANT WITH MY HANDS BEHIND MY BACK. MR. GARRETT'S ACTIONS WERE IN VIOLATION OF INDIANA CODE 35-41-3-3(b) WHICH INDICATES THAT AN OFFICER IS PERMITTED ONLY THE AMOUNT OF

FORCE REASONABLE & NECESSARY. MY CONVICTION, INCARCERATION IS FURTHER EXACERBATED BY THE EXISTENCE OF THE CORONAVIRUS. I HAVE SINCE CONTRACTED TUBERCULOSIS WHILE INCARCERATED.

I HAVE COMPLETED THE JAIL GRIEVANCE PROCESS PURSUANT TO THE PRISON LITIGATION REFORM ACT AT THE MADISON COUNTY JAIL per SHERIFF SCOTT MELLINGER. GRIEVANCE PROCESS COMPLETED SEPTEMBER 10, 2018.

WHEREFORE, PLAINTIFF GROVER MCPHAUL DEMANDS COMPENSATORY, PUNITIVE AND ALL OTHER RELIEF AS THIS COURT MY DEEM APPROPRIATE UNDER THE CIRCUMSTANCES FOR VIOLATION OF MY INDIANA CONSTITUTIONAL RIGHTS AND APPLICABLE FEDERAL LAW- PRECEDENT. AMOUNT YET TO BE DETERMINED, BUT NOT TO EXCEED $700,000.00

THIS 25th DAY OF AUGUST 2020.

Grover McPhaul

(A-705) WABASH VALLEY CORRECTIONAL FACILITY
P.O. BOX 1111
CARLISLE, INDIANA 47838-1111

132 N.E.3d 939 (Table)
Unpublished Disposition
(This disposition by unpublished memorandum decision is referenced in the North Eastern Reporter.)

Court of Appeals of Indiana.

Grover MCPHAUL, Appellant-Defendant,
v.
STATE of Indiana, Appellee-Plaintiff.

Court of Appeals Case No. 19A-CR-34
|
FILED August 30, 2019

Appeal from the Madison Circuit Court, The Honorable Angela Warner Sims, Judge, Trial Court Cause No. 48C01-1809-F5-2461

Attorneys and Law Firms

Attorney for Appellant: Paul J. Podlejski, Anderson, Indiana

Attorneys for Appellee: Curtis T. Hill, Jr., Attorney General of Indiana, Caroline G. Templeton, Deputy Attorney General, Indianapolis, Indiana

MEMORANDUM DECISION

Robb, Judge.

Case Summary and Issues

****1** [1] Following a jury trial, Grover McPhaul was convicted of two counts of battery resulting in bodily injury to a public safety official, both Level 5 felonies, and one count of criminal mischief, a Class B misdemeanor. The trial court sentenced McPhaul to an aggregate term of six years, with three years executed in the Indiana Department of

Correction ("DOC") and three years suspended. McPhaul appeals and raises two issues which we restate as: (1) whether the trial court erred in denying his motion to dismiss due to the State's alleged failure to preserve certain evidence; and (2) whether the trial court abused its discretion by refusing to give the jury an instruction on self-defense. Concluding the trial court did not err in either respect, we affirm.

Facts and Procedural History

[2] The Madison County Correctional Complex ("MCCC") is a jail overflow facility in Anderson, Indiana, and contains three dormitories where inmates are housed. Each dormitory is comprised of thirty to fifty-one bunks, several long tables with benches, sinks, and a bathroom with an open doorway and walkway. The inmates' meals are served on reusable "big hard plastic" trays, which are placed on a cart and then wheeled into the dormitory area where the inmates line up to receive their meal. Transcript of Evidence, Volume II at 44. Inmates are permitted to eat anywhere in the dormitory. However, once finished, the inmates are required to stack the trays in a specific location. In dormitory two, inmates stack their trays next to the door, which is right next to the dorm's control room. The control room has a one-way mirror window, control panel, and five monitors displaying live footage of the dorm from several different angles, excluding the interior of the bathroom.

[3] On August 20, 2018, McPhaul was an inmate housed in dormitory two at MCCC. Around 4:58 p.m., Correctional Officer Jared Henderson was inside the dorm's control room when he heard a "thud against the window." *Id.* at 27. To determine the cause of the noise, Officer Henderson rewound the security footage a "short time" and observed McPhaul throw his dinner tray against the window of the control room, behavior that violates MCCC rules. *Id.* at 28. The footage showed McPhaul walked to a sink, proceeded to his bunk, grabbed a roll of toilet paper, and went into the bathroom. After viewing the footage, Officer Henderson requested via radio that McPhaul be removed from the floor. Correctional Officers Nick Robinson and Austin Bentley indicated they would respond.

[4] Upon entering the dorm, the officers were unaware of McPhaul's location. Officer Bentley proceeded toward the bunks while Officer Robinson went straight into the bathroom area. When Officer Robinson entered, he observed "McPhaul getting ready to use the bathroom," so he walked up to McPhaul and asked "if he could cuff up[.]" *Id.* at 47. McPhaul "just blew it off and walked past" Officer Robinson and proceeded to exit the bathroom. *Id.* at 48. To prevent McPhaul from leaving, Officer Robinson grabbed McPhaul's right arm "to secure him in handcuffs[,]" but McPhaul physically pulled away. *Id.* at 49. Officer Robinson attempted to pull McPhaul back toward him. Officer Bentley, who had been unable to locate McPhaul in the bunk area, went to the bathroom area

where he initially observed McPhaul walk ahead of Officer Robinson out of the bathroom and pull away as Officer Robinson tried to get him in handcuffs.

**2 [5] Therefore, Officer Bentley immediately assisted by making contact with McPhaul, and all three fell to the ground in the walkway of the bathroom. A physical struggle to restrain McPhaul ensued. Officer Bentley secured McPhaul's upper body and Officer Robinson attempted to secure his legs; however, McPhaul was "kicking frantic[ally]" and, at some point, drew his arm back as if he intended to punch Officer Bentley. *Id.* at 50. Officer Robinson grabbed McPhaul's arm before McPhaul was able to take a swing. McPhaul took Officer Bentley's glasses from his face and bent them. At some point, McPhaul "started going for [Officer Bentley's] right eye[.]" *Id.* at 78. Officer Bentley testified that he "could feel [McPhaul's] finger ... applying pressure to ... [his] right eye." *Id.*

[6] The officers repeatedly ordered McPhaul to roll over on his stomach and place his hands on his back, but McPhaul did not comply and continued to forcibly resist their attempts to restrain him. Officer Garret arrived and delivered a defensive tactic to McPhaul enabling the officers to move McPhaul onto his stomach. Eventually, through the joint effort of the officers, McPhaul was restrained and escorted to an isolation cell. As a result of the altercation, Officer Robinson sustained an abrasion to his face and suffered from a headache, and Officer Bentley had some redness to his right eye.

[7] MCCC Supervisor Mason Brizendine, who had finished his shift at 4:00 p.m. that day, received a phone call notifying him of the incident with McPhaul. The following morning, Brizendine reviewed the incident reports from the officers involved in the altercation, as well as the video footage involving McPhaul. Brizendine recorded the footage of the incident, downloaded the footage from 4:57 p.m. to 5:00 p.m. to a disc, and provided it to the Madison County Sheriff's Office. McPhaul filed a grievance alleging that, at 4:15 p.m. on August 20, 2018, he had informed an officer that he wished to speak to a supervisor to which the officer responded, "get away from my window before [I] throw you in isolation and my name is irrelevant[.]" Exhibits at 11. McPhaul also alleged that he was assaulted during the charged incident and suffered injuries. On September 12, 2018, McPhaul submitted a request to Brizendine for "all documents[,] recordings related to the incident – assault that occurred on 8-20-18[.]" *Id.* at 13.

[8] The State subsequently charged McPhaul with two counts of battery resulting in bodily injury to a public safety official, Level 5 felonies, and criminal mischief, a Class B misdemeanor. Notably, before trial, McPhaul filed a Notice of Meritorious Self Defense, a Motion for Specific Discovery requesting the full video footage from the date of the incident, and a Motion to Preserve Video Evidence. The day before trial, the trial court held a status hearing during which defense counsel alleged that the MCCC failed to preserve full video evidence from August 20. Following voir dire, the trial court held a hearing to address McPhaul's pending issues during which Brizendine testified that he

preserved video evidence from 4:57 p.m. to 5:00 p.m. on August 20, which was consistent with the incident reports he had received from the officers involved in the altercation. However, footage automatically deletes after roughly twenty-nine to thirty-two days unless otherwise downloaded or preserved. Thus, any other video footage from August 20, including the interaction that McPhaul alleged had occurred forty-five minutes prior to the charged incident did not exist. McPhaul verbally moved to dismiss and for a mistrial due to *Brady* violations, namely failure to preserve all video evidence from that day. The trial court took the matter under advisement but ultimately denied McPhaul's Motion to Dismiss and/or for Mistrial, reasoning:

> ****3** The Court again continues to see this as an issue that is – could be attack of the investigation, what was done, what wasn't done, which certainly can go to the strength and credibility of the State's case.... [A] lot of the arguments that [defense counsel] make[s] ... are appropriate in the sense in how you wish to cross examine this case and how you intend on behalf of your client to possibly question the cred[ibility] of this case. The Court sees these being pertinent to those issues rather than this being viewed through a Brady examination.

Tr., Vol. I at 240. The matter proceeded to jury trial and at the conclusion thereof McPhaul tendered an instruction on self-defense, which the trial court refused to give. McPhaul was found guilty as charged and sentenced to an aggregate sentence of six years, with three years executed in the DOC and three years suspended. McPhaul now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Motion to Dismiss

[9] McPhaul argues that the "trial court abused its discretion in denying [his] motion to dismiss *and* motion for mistrial." Appellant's Brief at 8 (emphasis added). The State, on the other hand, argues that the trial court ruled on a motion for mistrial, not a motion to dismiss, because, when asked by the trial court, defense counsel clarified that it was a motion for a mistrial. We disagree with the State and conclude that McPhaul moved to dismiss his case.

[10] After voir dire and outside the presence of the jury, the trial court held a hearing to address McPhaul's pending issues before beginning the presentation of evidence. When asked whether McPhaul filed a formal motion to dismiss, defense counsel clarified, "No,

actually Judge [it is] a Motion for Mistrial caused by *Brady* Issues." Tr., Vol. I at 156.[1] However, throughout the remainder of the hearing, McPhaul essentially argued for *dismissal* of his case due to the alleged failure to preserve evidence, evidence that no longer exists and that he claims would have demonstrated that he acted in self-defense. Ultimately, the trial court denied what it characterized as McPhaul's "Motion to Dismiss and/or for a Mistrial." *Id.* at 231. Although the trial court characterized it as such, a motion to dismiss for failure to preserve evidence and a motion for a mistrial are analyzed differently. On appeal, McPhaul argues the State's "failure to preserve the requested [video] evidence which was potentially useful to [him] was in bad faith and a clear violation of his due process rights that warranted a dismissal of this cause." Appellant's Br. at 11. Ultimately, the substance of McPhaul's argument and the authority he cites leads this court to believe the relief McPhaul sought was available only through a motion to dismiss. As such, we now evaluate whether the trial court erred in denying his motion.

[11] We review a trial court's denial of a motion to dismiss for an abuse of discretion. *Ceaser v. State*, 964 N.E.2d 911, 918 (Ind. Ct. App. 2012), *trans. denied.* We therefore reverse only where the trial court's decision is clearly against the logic and effects of the facts and circumstances before it. *Id.*

[12] Again, the crux of McPhaul's argument is that he was denied due process requiring dismissal of the case because MCCC acted in bad faith by failing to preserve all requested video evidence from August 20, including video of an alleged encounter forty-five minutes prior to the charged incident. In *Arizona v. Youngblood*, the United States Supreme Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." 488 U.S. 51, 58 (1988). "Evidence is merely potentially useful if 'no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.' " *State v. Durrett*, 923 N.E.2d 449, 453 (Ind. Ct. App. 2010) (quoting *Youngblood*, 488 U.S. at 57).

****4** [13] McPhaul claims the prior encounter "ultimately led to him being assaulted by corrections officers" in the charged incident and this evidence would have been potentially useful to him at trial. Appellant's Br. at 10. However, we fail to see how evidence of an alleged encounter that occurred forty-five minutes prior to the charged incident provides any evidence that McPhaul was innocent or supports his theory that he acted in self-defense in the later altercation that was instigated when he repeatedly failed to comply with commands and physically resisted, causing injury to the officers. *See Durrett*, 923 N.E.2d at 453. Nonetheless, McPhaul attempts to demonstrate the State's[2] bad faith by characterizing the timing of the charges as suspicious because they were filed thirty-five days after the incident and just a few days after video evidence not saved to a disc would be automatically deleted. Additionally, McPhaul asserts that

Brizendine decided to preserve only the three-minute portion of the footage *he* determined to be relevant and for the sole purpose of prosecuting McPhaul.

[14] Based on our review of the record, we are unpersuaded that MCCC or the State acted in bad faith with respect to the video evidence. At the hearing, Brizendine testified that he determined what portions of the footage to record and save. He explained, in doing so, "My responsibility and what my priority was to clip the footage consistent with the incident that occurred. What caused the Officers to enter the dormitory and what ensued there after [sic]." Tr., Vol. I at 172. Brizendine chose to record and save the footage from 4:57 to 5:00 p.m. because it was "consistent with the reports" he had received from the officers involved in the altercation. *Id.* at 182. He also explained that unless recorded, all footage captured on MCCC's surveillance is automatically deleted by the system after twenty-nine to thirty-two days, depending on the camera. Brizendine provided the incident reports and downloaded footage to the sheriff, who testified that he prepared a probable cause affidavit requesting criminal charges based on the information Brizendine provided. With respect to the timing, the sheriff testified at trial that because McPhaul was already detained, "there was nothing ... so pressing that [the affidavit] needed to be completed right away" and he decided "to prepare the paperwork on a later date[.]" Tr., Vol. II at 193. Moreover, the sheriff was unaware that video footage automatically deletes until these proceedings began and had no reason to ask Brizendine to preserve additional evidence. With the evidence he had already received, "there was nothing else that [he] would be looking for." *Id.* at 197. The sheriff provided the affidavit and evidence to the prosecutor's office on September 7, 2018.

[15] We acknowledge that McPhaul referenced the 4:15 p.m. incident in his grievance filed on August 22 and subsequently filed several requests for footage to be preserved before the twenty-nine to thirty-two days had passed. However, McPhaul's requests specifically referenced "the incident - assault that occurred on 8-20-18 by your hired help[.]" Exhibits at 12, 13.[3] Therefore, MCCC staff had no reason to believe they needed to preserve any footage before that incident that occurred. McPhaul has failed to establish any bad faith by MCCC or the State.

[16] As previously indicated, defense counsel argued his position to the trial court. However, following evidence and argument at the hearing on the motion, the trial court ultimately denied McPhaul's motion, explaining it disagreed that the alleged evidentiary issues require a *Brady* analysis. Instead, the trial court stated that it viewed the argument as an attack of the investigation, namely "what was done, what wasn't done, which certainly can go to the strength and credibility of the State's case." Tr., Vol. I at 240. This is a reasonable interpretation of McPhaul's motion and the applicable law. Therefore, we cannot conclude the trial court abused its discretion in denying McPhaul's motion to dismiss.

II. Jury Instruction

**5 [17] Next, McPhaul contends that the trial court erred when it refused to provide the jury with an instruction on self-defense. Specifically, McPhaul argues his proposed jury instruction was a correct statement of the law and the evidence presented at trial "clearly established that an instruction on self-defense was warranted." Appellant's Br. at 15. We disagree.

[18] The giving of jury instructions is a matter within the sound discretion of the trial court, and we review the trial court's refusal to give a tendered instruction for an abuse of that discretion. *Howard v. State*, 755 N.E.2d 242, 247 (Ind. Ct. App. 2001). An abuse of discretion occurs if the instructions, considered as a whole and in reference to each other, mislead the jury as to the applicable law. *Smith v. State*, 777 N.E.2d 32, 34 (Ind. Ct. App. 2002), *trans. denied*.

> Generally, we will reverse a trial court for failure to give a tendered instruction if: (1) the instruction is a correct statement of the law; (2) it is supported by the evidence; (3) it does not repeat material adequately covered by other instructions; and (4) the substantial rights of the tendering party would be prejudiced by failure to give it.

Howard, 755 N.E.2d at 247.

[19] "A person is justified in using reasonable force against any other person to protect the person or a third person from what the person reasonably believes to be the imminent use of *unlawful* force." Ind. Code § 35-41-3-2(c) (2013) (emphasis added). A person is also justified in using reasonable force against a public servant in some circumstances outlined by statute. Ind. Code § 35-41-3-2(i) (2013). A correctional police officer is considered a public servant. Ind. Code § 35-41-3-2(b) (2013); Ind. Code § 35-31.5-2-185(a)(1). However, a person is not justified in using force against a public servant if the person reasonably believes the public servant is acting lawfully or engaged in the lawful execution of the public servant's official duties. Ind. Code § 35-41-3-2(j)(4) (2013).

[20] MCCC correctional officers "provide safety and security for all three ... dorms[, and m]ake sure that everybody is safe[.]" Tr., Vol. II at 41. The State maintains that even if McPhaul provided a correct instruction, there was still "no evidence to support a conclusion that the correctional officers were not engaged in the lawful execution of their duties." Brief of Appellee at 21. The evidence demonstrates that McPhaul's behavior in throwing his tray against the control room window violated MCCC rules and officers were instructed to remove McPhaul from the dormitory floor. When Officer

Robinson asked McPhaul to "cuff up," he ignored the instruction, walked past Officer Robinson, repeatedly ignored commands, and forcibly resisted while three officers attempted to restrain him. Tr., Vol. II at 47. There is no doubt that the correctional officers were engaged in the lawful execution of their duties, as instructed, and the record reveals no evidence of self-defense. As such, the trial court did not abuse its discretion by refusing to give the jury an instruction on self-defense.[4]

Conclusion

[21] For the reasons set forth above, we conclude the trial court did not err in denying McPhaul's motion to dismiss or in refusing to give a jury instruction on self-defense. Accordingly, the judgment of the trial court is affirmed.

****6** [22] ***940** Affirmed.

Mathias, J., and Pyle, J., concur.

All Citations

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Footnotes

[1] **In *Brady v. Maryland*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilty or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963).**

[2] **McPhaul argued to the trial court that the evidence was manipulated by a state actor, namely Brizendine, because he is paid by the State of Indiana. *See* Tr., Vol. I at 184, 201.**

[3] **We also note that McPhaul filed these requests on September 7 and 12, weeks after the incident occurred and after Brizendine already submitted the relevant information to the sheriff.**

[4] **Because this issue is dispositive, we need not address whether the instruction McPhaul tendered was a correct statement of law.**